

FILED 11 JUN 2011 40USDCORM

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

LARRY DENTON SMITH, et al.,  
Plaintiffs,

Case No. 1:10-cv-03077-CL

v.

U.S. BANK, N.A., et al., **ORDER**  
Defendants.

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**PANNER, District Judge:**

Magistrate Judge Mark D. Clarke filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Although no objections have been filed, this court reviews legal principles *de novo*. See Lorin Corp. v Goto & Co., Ltd., 700 F.2d 1202, 1206 (9th Cir. 1983).

I agree with Magistrate Judge Clarke's recommendations regarding standing, personal jurisdiction, and failure to state a claim. Accordingly, I ADOPT the Report and Recommendation. Rather than file objections to the Report and Recommendation, plaintiffs have submitted a proposed second amended complaint. I

order that the proposed second amended complaint be filed as the operative complaint in this action.

**CONCLUSION**

Magistrate Judge Clarke's Report and Recommendation (#98) is adopted. Defendants' motions to dismiss for lack of standing (#44, 69, and 77), and for lack of personal jurisdiction (#44, 50, 53, and 77), are granted. Defendants' motions to dismiss for failure to state a claim (#19, 44, 69, and 77) are granted with prejudice as to plaintiffs' claims under HOEPA, RESPA, and TILA, and are granted without prejudice as to plaintiffs' RICO claim and common law claims for fraudulent misrepresentation, breach of fiduciary duty, unjust enrichment, civil conspiracy, and quiet title. Defendants Rutherford and New Century are dismissed. Plaintiffs' motion to dismiss (#84) is granted as to Dill and denied as to Meola. Defendants' motion to stay discovery (#86) is denied as moot. Plaintiffs' proposed second amended complaint (#100) is ordered to be filed as the second amended complaint.

IT IS SO ORDERED.

DATED this 20 day of June, 2011.



OWEN M. PANNER  
U.S. DISTRICT JUDGE